

Trial Procedures
Criminal Trial to a Jury

The Honorable Michael H. Watson
United States District Judge
Southern District of Ohio - Eastern and Western Division

A lawsuit in which you represent a party has been assigned to this Court for trial. These procedures are designed to handle your case promptly and efficiently without impeding your ability to present your client's case fully and fairly. Regardless of the division in which your case was filed, it may be necessary to hold trial in either Columbus, Ohio or Cincinnati, Ohio.

A. Counsel Tables

The parties will occupy the counsel table chosen or agreed to before the opening of the first session of the trial. The parties and all counsel will be present at counsel tables at all sessions before the Court enters, and will remain at counsel tables until after the Court has left the bench. The parties and all counsel will remain at counsel tables until after the jury leaves the courtroom at the end of all sessions. The parties and counsel will stand upon the entrance and exit of the jury.

B. Appearances

Counsel will enter their appearances with the Court Reporter and the Courtroom Deputy before the start of the opening session of the trial. Any attorney not present at the final pretrial conference may not participate at trial.

C. Court Sessions

Under ordinary circumstances, trials will be held on Monday, Tuesday, Wednesday, Thursday and Friday of each week. Time may be reserved for the Court to conduct final pretrial conferences, motions, and preliminary injunctions.

Morning session begins at 9:00 a.m. and will recess at approximately 10:30 a.m. for fifteen minutes.

Noon recess will be at approximately 12:00 p.m.

Afternoon session begins at 1:30 p.m. and will recess at approximately 3:15 p.m. for fifteen minutes.

Court will adjourn each day at approximately 5:00 p.m.

D. Addresses of Counsel

Counsel will address the Court in the following manner:

- 1) All addresses to the Court will be made from the lectern facing the Court; and
- 2) Counsel shall stand when addressing the Court for any other reason.

E. Examination of Witnesses

Counsel should expect to proceed only with direct examination, cross-examination, and re-direct examination. Only in rare instances will the Court permit re-cross examination, and only where, in the Court's view, the scope of the re-direct exceeds the scope of cross-examination.

Counsel shall conduct their examination from the lectern and will approach the witness to tender an exhibit only after first seeking the permission of the Court. In formulating a question to a witness dealing with an exhibit, counsel shall specify the exhibit number or designation. Counsel will indicate to the Court when he/she has completed the examination of a witness, after which the Court will advise opposing counsel to proceed. During the examination of a witness, counsel will first obtain permission of the Court to confer with co-counsel. Counsel will stand when making an objection, and will address the objection directly and only to the Court.

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness.

F. Exhibits

Counsel will assemble, mark, and place all exhibits in 3-ring binders. Four (4) sets of exhibits are required: one to be used during trial, one for the Court, one for opposing counsel, and one for the law clerk assigned to this case. Each counsel shall deliver three (3) complete sets of the exhibits to the Courtroom Deputy not later than **THREE (3) DAYS** prior to the commencement of trial.¹

All exhibits shall be marked, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (e.g., as applied by a BATES numbering machine). All exhibits will be sequentially numbered with Arabic numerals as follows. Joint exhibits will bear Roman numerals and will be designated JX __ on white exhibit labels. Plaintiff's exhibits will bear Arabic

¹ The non-original sets of exhibits may contain Xeroxed or equivalent sets of photographs.

numbers and will be designated PX __ on yellow exhibit labels. Defendant's exhibits will be identified with letters and will be designated DX ____ on blue exhibit labels. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

When defendant's exhibits exceed fifty-two (52) in number, defendant shall promptly advise opposing counsel. In such event, both sides will identify exhibits with Arabic numbers and the letter prefix, "P" for plaintiff's, and "D" for defendant's. Counsel are to supply the Court Reporter, Courtroom Deputy, and opposing counsel with a list of exhibits. The parties shall confer so that any given exhibit shall be designated and numbered only once (e.g., "Smith-1" and "Jones-1001" should not be the same document). Joint exhibits are encouraged.

Exhibits deposited with the Courtroom Deputy and appropriately marked may be used by any party at trial.

Each party should offer its exhibits into evidence at one time, immediately prior to resting its case, except that an exhibit to be examined by the jury must be offered and admitted prior to examination. The admissibility of all exhibits referred to during trial and offered by the parties, other than those examined by the jury, will be ruled upon by the Court, at the latest, prior to that party's resting. Either side may offer any marked exhibit, regardless of which party marked it.

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness. Any deviation from this procedure, in a situation wherein exhibits are unusually voluminous, in which event counsel may wish merely to make his exhibits available for inspection and/or copying by opposing counsel, will be permitted only upon leave of Court being first obtained.

After first seeking the permission of the Court, counsel will approach the witness to tender an exhibit.

G. Demonstrative Evidence

If any sketches, models, diagrams or other demonstrative evidence of any kind will be used during trial, they must be exhibited to opposing counsel **ONE (1) WEEK** prior to the commencement of trial. Objections to such evidence must be submitted to the Court not later than noon the Friday preceding trial. Demonstrative evidence prepared solely for the purpose of final argument shall be displayed to opposing counsel at the earliest possible time, but no later than **TWENTY FOUR (24)** hours prior to the commencement of arguments.

H. Decorum

Colloquy or argument between counsel will not be permitted. All remarks shall be addressed to the Court. Counsel shall maintain a professional and dignified

atmosphere throughout the trial. Appearance, mannerisms, or habits that are designed to arouse the sympathy or prejudice of the jury are an impediment to an impartial trial and will not be permitted.

During trial, counsel shall not exhibit familiarity with witnesses, jurors, or opposing counsel and shall avoid the use of first names. No juror shall be addressed individually.

During opening statements and final arguments, all persons at counsel tables shall remain seated and be respectful so as not to divert the attention of the Court or the jury.

I. Voir Dire Examination

The entire panel of prospective jurors (i.e., those seated inside and outside of the jury box), will be examined in one continuous examination. Each prospective juror is assigned a number by the Jury Clerk. Jurors will be seated in order of their assigned numbers. Counsel will be provided with a list of the jurors' names and numbers prior to the commencement of trial.

Fourteen (14) prospective jurors will be seated in the jury box. The thirteenth and fourteenth jurors are alternates. The Court will assign seven (7) peremptory challenges to the government and eleven (11) peremptory challenges to the defendant. (Counsel are directed to the provisions of Fed. R. Crim. P. 24(b) and (c) for further information regarding peremptory challenges.)

The Court will conduct a comprehensive voir dire examination tailored to the issues in the case being tried (See Item M for the Court's questions). Counsel are encouraged to submit, prior to trial, questions they would like the Court to include in its voir dire examination. Copies of such questions should be served on opposing counsel **ONE (1) WEEK** prior to trial. Counsel may supplement the Court's examination with questions not previously asked. Counsel must address their questions to the entire panel in general and may not question an individual juror, unless justified. Counsel will not be permitted to question jurors individually regarding background information, as this information is contained in the questionnaires. Counsel should examine the questionnaires prior to the commencement of trial. Counsel may inquire regarding any omission in a juror's answer to the questionnaire or, after obtaining the Court's permission, regarding any inquiry justifiably elicited by information contained in the questionnaire.

The whole panel of prospective jurors (i.e. those in the jury box and those seated in the rear of the courtroom) will be examined before the Court will entertain challenges for cause or peremptory challenges.

The entire panel shall be challenged for cause. This will be conducted outside the

presence of the jury at the conclusion of the voir dire examination.

When any of the prospective jurors seated in the jury box are excused for cause, he or she will be replaced by the next juror, based on numerical order, seated in the gallery. The unexcused juror will proceed from the gallery and take the seat of the excused juror in the jury box.

M. Voir Dire Questions by the Court

The Court will question prospective jurors, generally, in the following manner:

- 1) Medical or physical disability that would make it difficult to serve as a juror; transportation problems.
- 2) Any prior knowledge or information about the offense the defendant is charged with which was gained from personal contacts or media accounts.
- 3) Any personal interest of any kind whatsoever in the case,
- 4) Any immediate family or personal situation which would render a juror unable to give this case he or her undivided attention.
- 5) Any relationship, either personal or professional with any of the parties, counsel, or any witness.
- 6) Any feeling, prejudice, or bias which might interfere with full and impartial consideration of the evidence in favor of or against either the defendant or the government.
- 7) Any feeling, prejudice or bias, because the defendant has been charged with an offense against the United States of America.
- 8) Any reason of any nature whatsoever why a juror cannot hear, consider, and deliberate on the evidence that will be presented and render a verdict based solely on the evidence.
- 9) Any reservation about accepting the proposition that jurors are the sole judges of the facts, and the Court is the sole judge of the law.
- 10) Any reason of any nature whatsoever why a juror cannot hear, consider, and deliberate on the evidence which will be presented and render a verdict based solely on the evidence.
- 11) Any member of the panel previously selected to serve on a jury in either a State or Federal Court. If so, would prior experience have any effect or influence on

his or her ability to serve as a fair and impartial juror in this case.

- 12) Any opinion as to the guilt or innocence of the defendant.
- 13) Whether a juror can extend the presumption of innocence to the defendant; that is, can he or she presume the defendant to be innocent of the charge unless and until his or her guilt is established by proof beyond a reasonable doubt of his being guilty.
- 14) Any juror, or any member of his or her immediate family, a member of a law enforcement agency, either at present or any time in the past.

K. Peremptory Challenges

Once the Court has ruled on all challenges for cause, the Court will entertain peremptory challenges. Counsel will present peremptory challenges to the Court at sidebar and on the record. Counsel shall refer to a prospective juror by name and number.

The parties will exercise their peremptory challenges alternatively will the plaintiff exercising the first challenge. As stated above, the Court will assign seven (7) peremptory challenges to the government and eleven (11) peremptory challenges to the defendant. "Passing" on a peremptory challenge constitutes using that challenge.

Peremptory challenges will be directed only to the prospective jurors seated in the jury box. When any of the prospective jurors seated in the jury box are excused by peremptory challenge, he or she will be replaced by the next juror, based on numerical order, seated in the gallery. The unexcused prospective juror will proceed from the gallery and take the seat of the excused juror in the jury box. This process will continue until all peremptory challenges are exercised.

L. Jury Instructions

Seven (7) days prior to trial, a joint submission shall be made of a complete set of jury instructions, indicating 1) agreed instructions; 2) instructions proposed by plaintiff, but opposed by defendant; and 3) instructions proposed by defendant, but opposed by plaintiff. All proposed instructions shall be supported by citations to authority at the time submitted to the Court. If counsel wish to utilize special verdict forms or submit interrogatories to the jury, these should also be filed along with the jury instructions.

All proposed jury instructions shall be submitted in hard copy and to the Court email address at watson_chambers@ohsd.uscourts.gov. Each instruction should be submitted in WordPerfect for Windows 6.1 or later, on a separate 8.5" x 11" sheet of paper identified as "Plaintiff(s) (Defendant(s)) Requested Instruction No. ____." The original of the request for special instructions must be filed with the Clerk of Court, prior

to presentation to the Court.

The Court uses as sources for its instructions Devitt, Blackmar, Wolff, & O'Malley's Federal Jury Practice and Instructions, 4th Edition; Ohio Jury Instructions; the Sixth Circuit Pattern Jury Instructions; and instructions given in prior cases.

During trial or at the close of all evidence, the parties may submit supplemental requests for instructions on matters not anticipated prior to trial.

Courtesy copies of all filings set forth in this Notice shall be hand-delivered to chambers at the time of the filing with the Clerk.

N. Court Reporter

Should counsel desire daily transcripts of all or part of the trial testimony, arrangements must be made with the official court reporter,

Cincinnati: Mary Ann Ranz at (513)564-7626
Columbus: Pat Shaw at (614)719-3205,

at least **TWO (2) WEEKS** prior to trial. Any emergency requests for transcripts of testimony during trial must be approved by the Court. A glossary of any unusual words, names, or terms that may be used during trial will be provided to the official court reporter at least **ONE (1) WEEK** before trial.

O. Pre-summation (Final Argument) Conference

The Court will hold a conference with counsel in chambers and on the record prior to final arguments in jury cases for the following purposes:

- 1) Counsel may be heard on proposed jury charges presented by either side and/or on the tentative charges submitted by the Court.
- 2) Counsel and the Court will determine the length of the final arguments to the jury.